

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LANCE CHRISTOPHER BADGETT,

No. C 03-4637 MHP

Petitioner,

v.

GARY LINDSEY,

Respondent.

**MEMORANDUM & ORDER**  
**Petition for Writ of Habeas Corpus**

Petitioner Lance Christopher (Chris) Badgett and his brother, John Kelly (John) Badgett, were convicted of first-degree murder and conspiracy to commit murder in California state court. Both were sentenced to terms of twenty-five years to life imprisonment in state prison. On September 11, 1997, Chris Badgett filed a petition for a writ of habeas corpus with this court challenging his conviction. He argues that his conviction should be overturned on three grounds: (1) The trial court violated his right to due process by refusing to allow a hearing on the voluntariness of statements made by the prosecution's main witness, Henrietta (Retta) Jasik; (2) his right to due process was violated based on a coercive immunity agreement entered into between Retta Jasik and the prosecution, which allegedly required her to testify consistently with prior statements; (3) the trial court violated his right to a fair trial by barring him from asserting a marital privilege based on his common law marriage to Retta Jasik under Texas law.<sup>1</sup> After having reviewed the record and the parties' arguments and briefs, and for the reasons set forth below, the court rules as follows.

**BACKGROUND**<sup>2</sup>

1 In February 1989, portions of a dismembered body were discovered washed up on shore in Santa  
2 Cruz, California. Using fingerprints, police identified the body as that of Michael Palmer. Palmer had  
3 originally accompanied petitioner, John Badgett, and petitioner's companion, Retta Jasik, from Devine,  
4 Texas, to California. John and Chris Badgett fled Texas to avoid revocation of probation. Palmer  
5 accompanied the group to avoid tax and marital problems. Prior to leaving, all three individuals had agreed  
6 that they would never return to Texas. The brothers and Palmer moved into a one-bedroom condominium  
7 in Santa Clara, California, with petitioner's sister, Theresa Badgett, her boyfriend, Joe Albano, and  
8 petitioner's companion, Retta Jasik. They selected names in obituary notices and obtained birth certificates  
9 and California driver's licenses under the names. Jasik secured a job as a cashier, and Palmer and the  
10 brothers secured jobs as security guards.

11 Based on Palmer's job application and California Department of Motor Vehicle information, police  
12 learned that Palmer's driver's license had been issued sequentially with three other licenses that belonged to  
13 the Badgett brothers and Jasik under assumed names. Police arrested John and Chris Badgett on May 26,  
14 1989. They also arrested Jasik for obtaining a false driver's license. Jasik was seventeen years old at the  
15 time, and she was later transferred to Santa Cruz County juvenile hall.

16 While in custody, Jasik was interrogated multiple times. Originally she did not inculcate either of  
17 the brothers in the murder. Rather, she stated that Palmer had returned to Texas and that he had called to  
18 report his safe arrival there. On or about May 30, 1989, Jasik's mother visited her at juvenile hall. Police  
19 suggested to Jasik's mother that John Badgett had already confessed to the murder and that her daughter  
20 would be released if she told the truth. Shortly thereafter, Jasik gave a statement inculcating the brothers in  
21 the murder.<sup>3</sup> She was then transported to the Santa Cruz County Sheriffs's Department. She was  
22 interrogated again and further implicated the brothers in the murder.

23 On June 2, 1989, Jasik appeared before the juvenile court for a detention hearing on charges of  
24 obtaining a false identification and acting as an accessory to murder. She was accompanied by her mother  
25 and her court-appointed attorney, Stuart Rich.<sup>4</sup> The parties entered into a preliminary immunity agreement  
26 regarding the charges, and Jasik was released from custody; she then returned to Texas with her mother.

1 In February 1990, at the first preliminary hearing in John and Chris Badgett's murder trial, the  
2 juvenile charges against Jasik were dismissed. Counsel agreed that Jasik would testify under grant of  
3 transactional immunity, with the exception of murder and perjury, and that she would have use immunity  
4 with respect to her statements. Following Jasik's return to Texas, Rich informed the prosecution that Jasik  
5 had additional evidence to disclose. The additional evidence included a pre-offense statement by petitioner  
6 that he did not know if he could trust Palmer and that he was not sure whether he should "off him or not."  
7 Jasik also informed Rich that she had petitioner's jacket, and that she believed it had blood stains on it.  
8 After additional discussions between Rich and the prosecution, the prosecution sent a letter to Rich  
9 confirming Jasik's immunity with regard to the statements and the evidence. Tests of the jacket did not  
10 disclose any blood.

11 On February 15, 1990, John and Chris Badgett's attorneys interviewed Jasik with her attorney  
12 present. The interview was taped, and copies were later made available to the prosecution. Following the  
13 interview, the prosecution contacted Jasik and interviewed her outside of the presence of her attorney.  
14 Rich later informed the prosecution that he did not believe it was either permissible or appropriate to  
15 contact Jasik outside of his presence. He also informed the trial judge of the incident. On February 21,  
16 1990, Jasik's attorney agreed to an interview of his client by the prosecution. The prosecutor ended the  
17 interview when Jasik's attorney insisted on taping the interview. Jasik returned to California in June 1990  
18 to testify at the second preliminary hearing, and again in September 1990, to testify at an *in limine* hearing.

19 At John and Chris Badgett's trial, Jasik was the primary prosecution witness, and she testified  
20 under a grant of immunity.<sup>5</sup> She testified that on the night of the murder, she and Chris had stepped out on  
21 the balcony of the condominium. They discussed the subject of Palmer wanting to return to Texas because  
22 he had previously mentioned that he missed his wife. Chris told Jasik that he was not sure if he could trust  
23 Palmer and did not know whether he "should off him or not" or "if his brother would go along with it."  
24 Jasik ignored the statements, believing that Chris was "just in one of his moods," and the two returned to  
25 the living room.

26 According to Jasik, about half an hour later, she, John, Theresa Badgett and Joe Albano, went out  
27 on the balcony together. John said that since Palmer had talked so much about returning to Texas, they  
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1 were going to purchase a bus ticket for him. At John's request, Theresa gave John her ATM card so he  
2 could borrow money for the ticket. Chris and John said they were going to a party, and Palmer agreed to  
3 join them. While Jasik wanted to accompany them, Chris insisted that she tell Palmer that she could not go  
4 because she had to work and was tired. Chris, John, and Palmer left the condominium around 11 p.m.,  
5 and Chris and John returned around 4 a.m. the following day. When they returned, Chris told Jasik that  
6 Palmer was on a bus back to Texas and would call in three days.

7 When the local news aired the discovery of Palmer's body parts, Chris Badgett told Jasik that he  
8 was in trouble. Petitioner, John Badgett, and Jasik then moved from the condominium into a motel. While  
9 staying at the motel, petitioner told Jasik that he and John had driven Palmer up into the mountains and then  
10 stopped to smoke cigarettes. When Palmer bent over to pick up a lighter that he had dropped, Chris shot  
11 him once in the head. John caught Palmer and the two rolled down the hillside until coming to a stop at the  
12 base of a tree. While Chris held a flashlight, John dismembered Palmer and put his body parts in a plastic  
13 garbage bag. They took the bag down the road and threw the parts into the ocean. Some time later, Jasik  
14 and John drove to San Francisco and threw the gun used in the murder off of the Golden Gate Bridge.

15 When initially questioned about the murder, Jasik told the police that Palmer had returned to Texas  
16 and had called to report his safe arrival there. She later told the police about the conversation in which  
17 Chris admitted to her that he had killed Palmer and about their efforts to conceal the crime, but did not tell  
18 the officers about her conversation with Chris before the killing in which he said he did not know whether  
19 he should "off" Palmer. She later revealed these statements.

20 At trial, Chris Badgett made an *in limine* motion to exclude evidence of his statements to Jasik on  
21 the ground of marital privilege, claiming a common law marriage with her under Texas law. After an  
22 evidentiary hearing, the court ruled that there was no common law marriage between Jasik and Chris under  
23 Texas law and denied the motion. The defense also made an *in limine* motion to exclude Jasik's trial  
24 testimony, claiming that the admission of such evidence would violate co-defendants' right to due process  
25 for several reasons. First, they alleged that Jasik was unlawfully incarcerated in Santa Cruz County for  
26 having a false identification because the charges arose from conduct in Santa Clara County. See Cal. Penal  
27 Code § 830.1; Cal. Welf. & Inst. Code § 626. Second, they contended that Jasik's initial cooperation  
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1 with the prosecution was coerced because police officers told Jasik she would be released from custody if  
2 she cooperated with them. Third, they alleged that the prosecution had interfered with Rich's representation  
3 of Jasik. Finally, defendants argued that the immunity agreement was itself coercive because it required  
4 Jasik to testify consistently with her previous statements to the police.

5 The trial court denied this second motion *in limine* on the ground that defendants lacked standing  
6 to bring the claims, but the court held that defendants were free to develop evidence before the jury of the  
7 prosecution's alleged coercion of Jasik. At the conclusion of the evidentiary portion of the trial, defendants  
8 moved to dismiss or, in the alternative, to strike Jasik's testimony on the ground that her immunity  
9 agreement with the prosecution was coercive. The trial court denied the motion but advised defendants that  
10 they were free to argue to the jury that her testimony should be discounted because of the agreement.

11 The jury convicted both defendants of murder and conspiracy to commit murder. Both were  
12 sentenced to terms of twenty-five years to life imprisonment. Both filed appeals with the California Court of  
13 Appeal. On May 12, 1994, the California Court of Appeal reversed the murder and conspiracy  
14 convictions on the ground that the trial court erred in denying defendants standing to challenge the admission  
15 of Jasik's allegedly coerced testimony. On June 8, 1995, the California Supreme Court reversed the  
16 decision of the Court of Appeal, holding that although defendants had standing to challenge the admission of  
17 the coerced trial testimony of Jasik, they had failed to demonstrate that the admission of Jasik's testimony  
18 violated their right to due process. People v. Lance Christopher Badgett, 10 Cal. 4th 330, 338 (Cal.  
19 1995). The court also concluded that the trial court had correctly determined that Chris Badgett could not  
20 assert the marital privilege for confidential marital communications between himself and Jasik because he  
21 had not entered into a valid common law marriage with Jasik in Texas. Id. On remand, the Court of  
22 Appeal upheld the convictions.

23 On September 11, 1997, Lance Christopher Badgett filed a petition for a writ of habeas corpus in  
24 this court. On July 13, 1998, he amended his petition, and on May 3, 2000, he filed a memorandum in  
25 support of his petition. Over the course of the next year, petitioner filed four motions as well. On  
26 September 26, 2001, the court denied all four motions. On October 15, 2003, the case was transferred  
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1 from the San Jose Division to the San Francisco Division of the Federal District Court for the Northern  
2 District of California.

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4 LEGAL STANDARD

5 A petition for habeas corpus from a state court conviction is governed by the standards set forth in  
6 the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. section 2254.<sup>6</sup> Section 2254 sets a  
7 deferential standard of review by a federal district court of “any claim that was adjudicated on the merits in  
8 State court proceedings.” 28 U.S.C. § 2254(d). Under this standard, a petition for habeas corpus should  
9 not be granted unless the state court decision on the merits was “contrary to or involved an unreasonable  
10 application of clearly established Federal law” or was “based on an unreasonable determination of the facts  
11 in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1), (2). A state  
12 court’s determination is “contrary to clearly established federal law” if it applies a rule that is contrary to  
13 United States Supreme Court precedent or confronts a set of facts that are materially indistinguishable from  
14 a case already decided by the Court and reaches a different result. Early v. Packer, 537 U.S. 3, 8 (2002)  
15 (citing Williams v. Taylor, 529 U.S. 362, 405-406 (2000)). A state court’s decision involves an  
16 “unreasonable application” of clearly established federal law if it identifies the applicable law, but applies the  
17 law in an objectively unreasonable manner. Vann Lynn v. Farmon, 347 F.3d 735, 738 (9th Cir. 2003)  
18 (citing Williams, 529 U.S. at 411). A state court’s factual findings are presumed to be correct in the  
19 absence of clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1); Sanders v. Lemarque,  
20 357 F.3d 943, 948 (9th Cir. 2004).

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22 DISCUSSION

23 I. Jasik’s Testimony

24 A. Involuntariness

25 Petitioner claims that his right to a fair trial was violated because Jasik’s statements to police and  
26 her resultant trial testimony were involuntary. Petitioner argues that the admission of Jasik’s statements to  
27 investigators without an evidentiary hearing on the question of whether the statements were coerced  
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1 violated his due process rights. In addition, petitioner argues that Jasik's statements should not have been  
2 admitted because they were the product of a coercive immunity agreement she had entered into with the  
3 prosecution—an agreement that required her to testify consistently with her prior statements to investigators  
4 and the prosecution.

5 While petitioner lacks standing to challenge a direct violation of Jasik's constitutional rights, he may  
6 be granted habeas relief if the trial court's admission of Jasik's testimony rendered the trial so fundamentally  
7 unfair as to violate due process. See Williams v. Woodford, 306 F.3d 665, 691 (9th Cir. 2002) (citations  
8 omitted). "[T]he failure to observe that fundamental fairness essential to the very concept of justice"  
9 constitutes a denial of due process in a criminal case sufficient to justify federal court interference. Lisenba  
10 v. California, 314 U.S. 219, 236-37 (1941). In order to amount to a denial of due process, the court must  
11 find that the absence of fundamental fairness "fatally infected the trial" such that the acts complained were of  
12 such quality as to necessarily prevent a fair trial. Id. To satisfy due process, an evidentiary hearing is  
13 required before presenting an allegedly coerced out-of-court confession *of a defendant* to a jury. See  
14 Sims v. Georgia, 385 U.S. 538, 544 (1967); Jackson v. Denno, 378 U.S. 368, 376-77 (1964). The  
15 Supreme Court has not held, however, that such a hearing is required prior to the admission of in-court  
16 testimony *of a third-party witness*.

17 The California Supreme Court's determination in regard to whether Jasik's testimony was coerced  
18 was not contrary to clearly established federal law, nor did it involve an unreasonable application of that  
19 law. See 28 U.S.C. § 2254(d)(1). The California Supreme Court held that while defendants had standing  
20 to assert the coercion claim, the failure to conduct an evidentiary hearing did not require reversal of the  
21 convictions. Badgett, 10 Cal. 4th at 351. The court first concluded that petitioner had the burden of  
22 demonstrating that the improper coercion of the witness impaired the reliability of the witness' trial  
23 testimony.<sup>7</sup> Id. at 348. Based on a detailed examination of the record, the court then concluded that the  
24 defendants had not carried their burden of proving coercion, and thus petitioner was not deprived of due  
25 process due to the admission of Jasik's testimony.<sup>8</sup> Id. at 363.

26 Implicit in the court's determination was the finding that the failure to hold an evidentiary hearing did  
27 not violate the petitioner's due process rights. No clearly established federal law requires state courts to  
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1 hold an evidentiary hearing when a defendant raises a claim that a witness has been coerced. The petitioner  
2 had the opportunity to present evidence of the alleged coercion to the jury. As a result the California  
3 Supreme Court had a full record from which to determine whether Jasik had actually been coerced. Under  
4 section 2254's deferential standard, this court cannot say that the California Supreme Court's decision not  
5 to require an evidentiary hearing constitutes an unreasonable application of clearly established federal law.  
6 See 28 U.S.C. § 2254(d)(1).

7 Further, the California Supreme Court's decision was not "based on an unreasonable determination  
8 of the facts in light of the evidence presented in the State court proceeding." See 28 U.S.C. § 2254(d)(2).  
9 The court held, based on an examination of the record, that Jasik's testimony had not been coerced on four  
10 grounds. Badgett, 10 Cal. 4th at 363. First, the court found that Jasik had been lawfully arrested.<sup>9</sup> Id. at  
11 353. Jasik's statements were thus not the product of an unlawful arrest. Id. Second, the court concluded  
12 that Jasik's acceptance of an offer of release from custody in return for cooperation with the prosecution  
13 did not render her statements coercive. Id. at 355. Third, the court determined that Jasik was not subject  
14 to continued overreaching and unethical conduct by either the investigating officer or the district attorney.  
15 Id. at 355. While the prosecution did interview Jasik outside of the presence of counsel, petitioner could  
16 not assert Jasik's Sixth Amendment right to counsel. Id. at 356-57. Finally, the court determined that the  
17 immunity agreement with prosecutors did not require Jasik to testify consistently with her previous  
18 statements, and therefore did not render her testimony involuntary. Id. at 363. On this final issue, the court  
19 held that the immunity agreement only required Jasik to tell the truth. Id. at 362. Trial evidence  
20 demonstrated that Jasik knew this to be the case. Id. Additionally, the California Supreme Court held that  
21 Jasik's trial testimony differed from her prior statements to police. Id. Because Jasik's testimony differed  
22 from her previous statements, petitioner cannot now claim the existence of a coercive agreement to testify  
23 consistently. Even if Jasik had testified consistently with previous statements to police, however, petitioner  
24 still has not demonstrated sufficient evidence to show that her statements were coerced. Based on this  
25 evidence, the California Supreme Court's determination that the trial testimony of Jasik was voluntary is not  
26 unreasonable. See 28 U.S.C. § 2254(d)(2).

27 B. Immunity Agreement  
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As a separate claim, petitioner argues that Jasik's testimony was coerced because it was the product of an immunity agreement that required her to testify consistently with her prior statements. A promise of leniency, standing alone, in exchange for a suspect's cooperation with the government is not an "improper inducement that causes the suspects's later testimony for the government to be involuntary." Woodford, 306 F.3d at 692 (citing United States v. Leon Gueroero, 847 F.2d 1363, 1366, (9th Cir. 1988); United States v. Moody, 778 F.2d 1380, 1384-85 (9th Cir. 1985)); see also Douglas v. Woodford, 316 F.3d 1079, 1093 (9th Cir. 2003). By contrast, a promise of leniency coupled with threats or other coercive practices is sufficient to render subsequent inculpatory statements involuntary. Woodford, 306 F.3d at 682. Jasik was offered immunity in exchange for her truthful testimony at trial. Petitioner has presented no evidence which would suggest that the offer of immunity was accompanied by threats or other coercive practices. Therefore, the California Supreme Court's determination that the agreement did not render her subsequent trial testimony coerced or unreliable does not constitute an unreasonable application of clearly established federal law. See 28 U.S.C. § 2254(d)(1). Nor was the decision "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." See 28 U.S.C. § 2254(d)(2).

II. Marital Privilege Claim

Petitioner also claims that he is entitled to habeas relief because the trial court violated his right to a fair trial by barring him from asserting a marital privilege based on his supposed common law marriage to Retta Jasik under Texas law. While a federal court is not entitled to reexamine state court decisions on questions of state law, it may grant relief where such a decision violated the Constitution, laws, or treaties of the United States. See Estelle v. McGuire, 502 U.S. 62, 68 (1991); see also Pulley v. Harris, 465 U.S. 37, 41 (1984); Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1982). Thus, while petitioner's marital privilege claim arises out of state law, he may be entitled to relief if the state court's application of the law denied his right to a fair trial.

The California Supreme Court did not apply either California or Texas law in such a way as to implicate petitioner's right to a fair trial. The trial court determined that while a common law marriage in Texas was sufficient to confer a marital privilege in California, petitioner and Retta Jasik had not

1 demonstrated the existence of a common law marriage under Texas law. Badgett, 10 Cal. 4th at 365. The  
2 California Supreme Court agreed. Id. The court held that California's marital privilege protects  
3 confidential communications between spouses. Id. at 363 (citing Cal. Evid. Code § 980). The privilege  
4 applies in the case of a valid marriage, and recognizes the validity of a marriage contracted in another state  
5 that would be valid under the laws of that state. Id. Under Texas law, courts recognize a valid marriage  
6 where the parties show that they agreed to become husband and wife, that they were living together in  
7 Texas pursuant to the agreement, and that they held each other out to the public as husband and wife in  
8 Texas. Tex. Fam. Code § 1.91(a)(2); Hightower v. State, 629 S.W.2d 920, 924 (Tex. Crim. App. 1981).  
9 The claimant of the privilege bears the burden of proving, by a preponderance of the evidence, the facts  
10 necessary to sustain the claim. See In re Glasco, 619 S.W.2d 567 (Tex. Crim. App. 1981). The lower  
11 court determined that while Jasik wore a wedding ring, given to her by her mother, she and petitioner did  
12 not hold themselves out to the public as husband and wife. They did not inform petitioner's parents of their  
13 marriage despite the fact that they lived with petitioner's mother. Jasik also stated that they did not get  
14 married because she was not ready for such a commitment. It was only after petitioner's arrest that he  
15 suggested to Jasik that she would not have to testify against him if they claimed that they were married.  
16 Based on this evidence, the California Supreme Court concluded that petitioner had not demonstrated that  
17 he and Jasik had a valid marriage under Texas law. Badgett, 10 Cal. 4th at 365. Because the California  
18 Supreme Court correctly applied California and Texas law, this court cannot say that the denial of  
19 petitioner's alleged marital privilege implicated his right to a fair trial.

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21 CONCLUSION

22 For the foregoing reasons petitioner's request for a writ of habeas corpus is DENIED.

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24 IT IS SO ORDERED.

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27 Dated: April 23, 2004

/s/ \_\_\_\_\_  
MARILYN HALL PATEL

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Chief Judge  
United States District Court  
Northern District of California

ENDNOTES

1. While petitioner originally claimed that the trial court erred by refusing to read an instruction that Retta Jasik's testimony must be viewed with caution because she was granted immunity, he later withdrew this claim. See Reply to the Response to Petitioner's Mem. Of Law in Support of the Petition for Habeas Corpus, July 26, 2000, at 4 ("For the record, petitioner declares under penalty of perjury that the claim of jury instruction is withdrawn and will not be raised again in this, or any other court.").
2. The background has been culled from the parties' moving papers, the trial record, and the state court opinions.
3. Petitioner contends that Jasik was scared at the time and fabricated these statements in order to secure her release.
4. Rich served as Jasik's appointed counsel until the first preliminary hearing, when juvenile charges against Jasik were dismissed and he was relieved. He continued to serve as retained counsel for a nominal sum until the second preliminary hearing. After the second preliminary hearing, he withdrew because he anticipated being called at trial as a witness for the defense. Jasik remained unrepresented through trial.
5. While Jasik was never provided with full transactional immunity, she received use immunity for her statements, as well as transactional immunity for crimes other than murder and perjury.
6. Congress amended section 2254 through the 1996 passage of AEDPA. John Badgett filed this habeas petition in 1997, well after the effective date of AEDPA. The statute, as modified by AEDPA, therefore applies to this case.
7. The California Supreme Court also concluded that the exclusionary rule applicable under the Fifth Amendment right to be free from compelled self-incrimination—which would bar the use of statements considered to be the fruits of an unlawfully obtained confession—would not apply in the context of a due process claim. Id. at 346.
8. The court noted that ordinarily when a defendant has been precluded—based on an erroneous standing ruling from litigating an issue below—there will be an inadequate trial record to review. However, this case was different:

As defendants had a full opportunity to litigate the issue of the coercion of the witness, with the same motive and opportunity for cross-examination that would be present at an evidentiary hearing on an *in limine* motion, the trial court's failure to hold an evidentiary hearing on the motion was harmless from the point of view of the development of the record.

Id. at 351-52. Because the petitioner had the opportunity to present evidence of coercion at trial, the record was sufficient for the court to engage in a review of the coercion issue despite the trial judge's

erroneous ruling that defendant's were not entitled to an evidentiary hearing.

9. The court also found that holding Jasik in Santa Cruz rather than Santa Clara County had no effect on whether the statements were coerced or unreliable. Id. at 353.